

REMARKS

Remark 1:

With all due respect, applicant has amended Claim 1 to overcome the rejections based on the cited prior art. With all due respect, the cited prior art does not teach the use of wound healing composition H3 protein growth factor in combination with treating subsurface layer of skin with a source of laser energy to cause stimulation of collagen remodeling.

Remark 2:

With all due respect, applicant has amended Claims 7-11 to overcome the rejections based on the cited prior art. With all due respect, the cited prior art does not teach the use of wound healing composition H3 protein growth factor in combination with treating subsurface layer of skin with a source of laser energy to cause stimulation of collagen remodeling for either treatment of acne scars in skin, treatment of photodamaged skin, or treatment of wrinkles.

Remark 3:

With all due respect, Applicant asserts that it is well settled that in order for references to be properly combined, there must be a teaching in at least one of the references to suggest that the disclosure of any of the other references could be modified to produce the Applicants' claimed invention. ACS Hospital System, Inc. v. Montefiore Hospital et al., 221 U.S.P.Q. 929 (Fed. Cir. 1984); Orthopedic Equip. Co. v. U.S., 217 U.S.P.Q. 193 (Fed. Cir. 1983). Additionally, absent some suggestion or incentive, the teachings of references may not be combined. ACS, supra, 221 U.S.P.Q. 933, In re Rinehart, 531 F. 2d 1048, 189 U.S.P.Q. 143 (C.C.P.A. 1976).

Applying this law to our situation here, it can be seen that there is a glaring lack of teaching in either O'Donnell and Purchio, or Tankovich and Purchio, to combine the one with the other. In fact, as

can be seen from Purchio, there is a teaching away from considering any use of H3 protein for treatment of acne, wrinkles or photodamaged skin. While Purchio may suggest the use of H3 in gene therapy, there is no suggestion that H3 may be combined with radiation therapy for treatment of acne, wrinkle removal or treatment of photodamaged skin.

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CONCLUSION

Applicant respectfully submits that for all the foregoing reasons, the claimed subject matter describes patentable invention. Furthermore, Applicant submits that the specification is adequate and that the claims are now in a condition for allowance. No new matter has been entered.

Applicant hereby respectfully requests Examiner to withdraw the cited references as anticipating or obviating prior art, enter these amendments, find them descriptive of useful, novel and non-obvious subject matter, and authorize the issuance of a utility patent for the truly meritorious, deserving invention disclosed and claimed herein.

Without further, Applicant does not intend to waive any claims, arguments or defenses that they may have in response to any official or informal communication, paper, office action, or otherwise, and they expressly reserve the right to assert any traverse, additional grounds establishing specificity and clarity, enablement, novelty, uniqueness, non-obviousness, or other patentability, etc.

Further, nothing herein shall be construed as establishing the basis for any prosecution history or file wrapper estoppel, or similar in order to limit or bar any claim of infringement of the invention, either directly or under the Doctrine of Equivalents.

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Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this paper and the documents attached hereto are being deposited in a postage prepaid, sealed envelope with the United States Postal Service using First Class Mail service under 37 CFR 1.08 on the date indicated and is addressed to "Commissioner of Patents and Trademarks, Washington, D.C. 20231". Signed: Ray K. Shahani Date Mailed: February 24, 2004